MOTION FILED APR 1 1963

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

Docket No. 533

EDYTHE L. DYER, *Petitioner*

vs.

EDWARD P. MURRAY, as successor trustee under the Will of the late JOHN CASSIDY, JANE MURPHY SULLIVAN, ROSELLA MARIE FLYNN, JOAN CASSIDY STETSON, BARBARA ANN CASSIDY and JOHN CASSIDY, Respondents.

"MOTION for leave to file a petition for rehearing, out of time"

Respectfully submitted,

Edythe L. Dyer,

Petitioner Pro Se.

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MOTION

As provided in Rule #58, (The Supreme Court of the United States) I do hereby file this Motion to waive that portion of Rule #58 requiring a petition for rehearing to be made within a (25) day period.

It is my understanding that your Court has the power to waive its own rules. As support for this request, may I point out that:

1. I have been conducting my own case on a pro se basis.
2. Whereas my petition for certiorari to the Supreme Court of the United States was denied on January 7, 1963, and that the attached decision by the Supreme Judicial Court of Maine (Docket #50 Stetson vs Johnson) was *NOT* filed until February 5, 1963 this material fact was not previously available to me. This decision is inconsistent with this court's prior decision (179A 2nd 307 Murray vs Sullivan) on which my writ was considered. The inconsistency of the two decisions are ambivalent and non-factual, thus proving my original contention in my petition for certiorari (docket #533—Oct. term 1962 Dyer vs Murray Supreme Court of United States) to be correct and now so admitted by the same Maine Court.
3. That I have recently communicated with your Court re: letters to E. C. Schade, Deputy Clerk, dated Feb. 7th and 9th, 1963 as soon as possible upon receipt of the Maine Court's recent ruling.
4. And that, being unfamiliar with the mechanics of your Court and the time factors which were beyond my control, I do hereby request permission for a rehearing.

I do hereby swear and certify that this petition for rehearing is not taken for delay and is presented in good faith.

On March 6, 1963 I petitioned the Supreme Judicial Court of Maine, within the appeal period allowed for (Docket #50

Cassidy vs Johnson, Feb. 5, 1963) —it was denied on March 8, 1963.

The petition for review was on the basis of both State and Federal constitutional law.

> "Finding of fact contrary to the weight of evidence is an error of fact" (224 F. 60-62)

In the Maine Court's most recent ruling (Docket #50) the court stated and ruled for inheritance tax reasons, that Mr. Cassidy died on March 25, 1918.

In the Maine case—(179A 2nd 307, Murray vs Sullivan, March 23, 1962) The Supreme Judicial Court of Maine ruled in part, (quote),

> "As already noted the sentence reads—IF no child is living at the time of his death, to all of his lineal descendants equally, if all are of the same degree of kindred, if not according to the right of representation."

Here the Maine Court adopted this (IF) condition in the Maine intestate descent statute and gave the testator an *artificial death date*, so that this part of the statute would agree with the Court's construction.

The Court ASSUMED that Mr. Cassidy died intestate on June 9, 1961, approximately (44) years after his *actual* death date, March 25, 1918.

(Again Quote the Court)

> "To effectuate the testator's intention as disclosed by his testamentary pattern the *statute must* be applied *AS THROUGH* the testator's death occurred immediately after the death of his last surviving child, so that the condition that 'no child is living' is satisfied." (Emphasis added)

This assumption was unnecessary for the court only needed to recognize the true natural date of death, required by the statute, and the whole pattern of the will and statute fitted together perfectly.

All through the Descent Statute, in the Revised Statutes of Maine, the law refers only to a man's actual death date. There is no provision for TWO legal, statutory death dates.

One of these "*legal*" statutory death dates must be non-factual, thus proving discrepancy, for practical reasons, if for no other.

By using or assuming two death dates, the Maine court has in essence affected the "proportional" distribution of this estate, which deprives me of property, causing a (1/6) distribution to me instead of (1/3) of a multi million dollar estate. To Wit:

It is the contention of this petitioner that although each state has reserved its power to control the inheritance of property, each must exercise its laws uniformly. The Supreme Judicial Court of Maine has violated the 14th Amendment by failing to so regulate the distribution of the Estate of John Cassidy due to their failure to follow the statute of intestacy as directed by the terms of the will, and as compelled and directed to do under the 14th Amendment to the Constitution of the United States.

This same court has now ruled "as though" a man, intestate died at two different dates, namely: June 9, 1961, when his trust estate terminated as an intestate estate; and on March 25, 1918 (when he actually died) for inheritance tax purposes.

Your petitioner maintains that it is improper for the Maine Court to assume an artificial death date, to distribute an estate on the basis of the State INTESTATE statute when in fact, the statute; manifestly requires the mechanics of the statute to function only upon known FACTS.

1. That he did have children living, and the issue of a deceased child, at the time of his death, March 25, 1918. This FACT must be the first consideration in order for the descent statute to function at any time; according to the Revised Statutes of Maine.

2. THE DESCENT STATUTE: The Revised Statutes of Maine, Volume 4, Chap. 170 (II) specifically states (quote). "The remainder of which he (Mr. Cassidy) *dies seized*, descends in equal shares to his children AND to the lawful issue of a deceased child by right of representation. *IF* no child is living *at the time of his death*, to all of his lineal descendants equally if all are of the same degree of kindred, if not according to the right of *representation.*

PLEASE NOTE—(IF) is a condition predicated only upon (the time of his death)

Here is the "Conditional part" of the statute which the Maine court adopted and consequently re-wrote Mr. Cassidy's will. The whole premise is based upon a non-factual condition and an artificial assumption.

Nothing can be clearer, the words are certain and they say exactly what the Maine Legislature intended for them to mean.

"IF" no child is living *at the time of his death!* The Court has *assumed* that he did not die when he did die, and that he did die without children, (only grandchildren). Then the court utilized the "IF" condition in the statute as of 1961 instead of 1918.

However he did die with children and the issue of a pre-deceased child.

How incongruous, how unconstitutional can a court apply construction, in order to utilize the Statute *requested* in the will?

If the statute is used (except as a regular intestate estate) surely it is the duty of the Maine court to apply the FACTS; for there is no other law, unless it can be tailor made by the court, without the legislature.

The most striking FACT is that if the court recognized the FACT that the man died in 1918, all else would have been crystal clear (without ASSUMPTION or construction)!

PLEASE NOTE the statute states: that *of which a man dies seized* (descends) to his children AND to the lawful issue of a predeceased child.

3. These conditions are the LAWS OF MAINE, made and approved by the Maine Legislature, a branch of the Maine government, which cannot constiutionally be broken.

4. The Supreme Judicial Court of Maine has *NOW* just ruled (Docket #50, Stetson vs. Johnson, Feb. 5, 1963) (Quote the Court) "It is clear that the only value to be considered for assessment purposes under the provisions of the law as it "THEN" stood was the value at the date of the testator's death." (1918).

THEN was a key word in the original case (179A 2nd 307:—Murray vs Sullivan) It is a coincidence that a different meaning as to when THEN actually is, is now used by the same court.

In fact, this latest ruling is exactly why the intestate statute must be synonymous with the use of the inheritance tax statute, namely, as of the date the man actually died, and is so admitted by the court.

To use the INTESTATE statute at any other date (except the true date of death) would be irregular, void, and would render it impossible to use (for lack of clarity) because it was not designed to be used at any other time. Any twisting or altering of the statute's meaning on the basis of an assumed death date, changes the conditions and the terms of the statute to such an extent as to make it irreconcilable, irregular and unconstitutional, both State and Federal, thus voiding any application of the implied meaning which the Maine Court has tried to read into this will. (However the will and statute speak for themselves).

The (court's construction) is so ambivalent, so latent, so obvious and so impossible to reconcile that your petitioner charges the Supreme Judicial Court of Maine did give mean-

ing to the statute which is contra to the constitution of the United States.

My only conclusion is that the Supreme Judicial Court of Maine was in error, when it ruled that the estate passed (quote) "as though" Mr. Cassidy died on June 9, 1961 (which he did not do). The court should have ruled that the estate passed (*as the statute provided* on June 9th, 1961)—"as though" Mr. Cassidy *died on March 25, 1918* (which he did do) and as the court was quick to admit in its recent decision. Please also see this Maine Court's ruling in 108 Me. at page 317) Matthew Laughlin vs. Alonzo Page. Stated in part as follows (quote):

> "Estates tail are estates of inheritance which, instead of descending to heirs generally, go to the heirs of heirs of the donees body, which means *his* lawful issue, his children, and *through them* to his grandchildren in a direct line, so long as his posterity endures in a regular order and course of descent, and upon the extinction of such issue, the estate determines. (1) Walsh Real prop. 5th Ed. 72-73." (Emphasis added)

Mr. Cassidy's will requested, in part,

> "Upon the termination of this trust, as aforesaid, namely after the decease of all of my said five named children, all *my* estate in whatever form the estate shall then be, shall then vest in and become the property of all of *my lineal descendants*, if any, then living, *in the same manner* and the *same proportions* as shall then be provided by the then existing laws of the State of Maine for *descent* among lineal descendants of *Intestate* property real and personal." (Laws in 1961 were same as in 1918)—(Emphasis added)

PLEASE NOTE: This case *is* exactly to the point! (Quote the same Maine court)

> "The question then is, whether these heirs shall take per capita or per stirpes, and the court are of opinion, that

according to the established rule of law a devise to "heirs" whether it be to *ones own heirs, or to the heirs of a third person*, designates not only the persons who are to take but also the *manner and proportions in which they are to take;* and that, when there are no words to control the presumption of the will of the testator, the law presumes his intention to be, that they shall take as heirs would take by the *rules of descent*. Therefore in the present case, where there are no such words, the true construction of the will is, that the grandchildren take per stirpes and not per capita." (Doherty vs Grady 105 Me. 36 at page 44)—(Emphasis added)

PLEASE NOTE: Here the Supreme Judicial Court of Maine on December 24, 1908, just prior to the Cassidy will, wrote this law which Mr. Cassidy's attorney surely must have been aware of. (NOTE) Whether it be to ones own heirs or the heirs of a third person—(this is most conclusive!)

PLEASE NQTE ALSO THAT; Whereas Mr. Cassidy's will specifically requested for his estate to *Descend;* in the same *Manner and Proportion* as provided by the *laws of the State of Maine;* there can be *no doubt* what he meant. (His legal heirs whoever they were) and if none then to (his sisters legal heirs whoever they might be).

The Maine Supreme Court rewrote this man's will by assuming—and assumption is not fact! The intestate statute can only use the true date of death, when it was intended to be used by the Maine legislature (if it is constitutionally used at all at a later date) (June 9, 1961 instead of March 25, 1918), as a part of this will. (Same as an ordinary statutory Intestate estate).

There is written proof, inherent in the will, that Mr. Cassidy wanted:

(1) *His* property

(2) to *descend*

(3) to his *lineal* descendants

(4) in the *same manner* and proportions as provided by the *LAWS* of the State of Maine on *June 9, 1961.*

(5) Same as *INTESTATE* property (for any man)

(6) In the same way Mr. Cassidy and his lawyer Matthew Laughlin—understood the law to be, as the Maine Court ruled, in Matthew Laughlin vs Alonzo Page, 108 Me. at page 317) (Supra)

The *Laughlin case* proves that the only Maine law that attorney Laughlin and Mr. Cassidy (his client) knew or could expect—IS IN FACT THAT:—the estate could only pass to his heirs, (whoever) after all of his children were deceased (June 9, 1961)—same as any intestate estate.

WHEREAS Mr. Cassidy did actually die on March 25, 1918, the only "legal" death date which the intestate statute could and *must* use for any intestate estate, as provided by the *laws* of the State of Maine, *must* be by statute his true date of death, March 25, 1918.

The penetrating fact is that only a per stirpes ruling is constitutional; to do otherwise deprives me of my rights under the 14th Amendment to the Constitution of the United States.

PLEASE NOTE: When a testator directs in plain and simple language that he wants his estate to *DESCEND* (in the same manner and proportions, as provided by the laws of the State of Maine for *descent* among *lineal* descendants of INTESTATE property) he is talking about his *heirs.* The common law rule of property rather than construction provides without equivocation that a man cannot make *his* own *HEIRS* his purchasers. (60F 21-29) (69 NH 372)—(this was one of the Federal cases in my first petition to the Maine Court June 5, 1962, page 15.

DESCENDANTS are, "All persons who have descended

from a common ancestor". (Black's Dictionary 3rd Ed. page 1013) (many cases)

The testator requested Estate to Descend The Revised Statutes of Maine (1954) Vol. (4) Page 665—Chap. 170, Sec. VIII; (quote) *The rights of descent flow from the legal status of the parties* and where the status is fixed, the law supplies the rules of descent, with reference to the situation as it existed *at the death of the decendent*. Getchell vs Curtis 134 Me. 302; 186A 669 (Emphasis added)

PLEASE NOTE: The Revised Statutes of Maine (1954) Vol. (4) Chap. 170, Page 666, Sec. (2) (quote) *How degrees of kindred computed*

> In the mode of computing the degrees of consanguinity, the civil law, which is generally followed in this country upon that point, begins with the *intestate* and ascends from him to a *common ancestor* and descends from that ancestor to the next heir, reckoning a degree for each person as well in the *ascending* as *descending lines*. Cables vs Prescott 67 Me. 582 (Emphasis added)

PLEASE NOTE: The statute fixes its own rules, and by these rules we must be governed (Messer v Jones 88 Me. 353)—(67 Me. 583) (45 Me. 115)

PLEASE NOTE: If two constructions may be put upon a provision in a will, one of which will violate an inflexible rule of law and the other not, the construction which will not offend the rule is to be adopted by the court.. (Towle vs Doe 97 Me. 433)

PLEASE NOTE: Your petitioner, was the issue of a predeceased child.

Property acquired by (DESCENT) is property which the law, *upon the death of the ancestor*, casts on the heir. (Orr v White 6 NW 99) (title by descent—Black's Dic. 3rd Ed.).

PLEASE NOTE The only fatal ambiguity has been created *unnecessarily* by the Maine Court when it *assumed*

"as though" the testator died on June 9, 1961. This construction was not obligatory, a natural clear interpretation was at hand for the court to adopt, based upon *Fact*—and proof of death.

It is common knowledge and accepted Maine law that a man is not intestate until he is dead and then and *only* then can his estate be probated and distributed (according to Maine law). By *changing* the natural death date the Maine court created a different legislative meaning for the descent statute and different proportions for the heirs. (In effect the Judicial branch of government has written a new law) (and that the present statute does not mean what it says).

Namely: (a) for the court to assume the testator died on June 9, 1961—and to THEN apply the statute (quote court) "as though"—he *THEN DIED*—created a per capita distribution among his *final* descendants living on June 9, 1961.

(b) However, the court should have assumed (correctly) that the testator died on March 25, 1918, and wished to distribute the estate among his heirs living on June 9, 1961—as provided by the intestate laws of Maine. (Without conflict between the will and statute) (without the court creating an artificial death date)—(without the court unnecessarily rewriting the will).

The Court needed only to adopt the true date of death (March 25, 1918) and all the "jig saw" pieces fitted together perfectly and in harmony with all the other phases of the will and statute. A per stirpes distribution could be the only result. No construction was necessary to establish intent, the will pattern was clearly to be by *right of representation* all through the will.

WHAT IS THE PRINCIPAL OF THE FEDERAL QUESTION HERE?

Thinking people must "stand" for and seek the most infetessimal fundamental truths, or we "fall" for hasty ASSUMPTION. That which (is), that which is apparent and understood to exist, a known fundamental fact, must be recognized, or life and "justice" is only intrigue and a sham.

Can the Supreme Judicial Court of Maine, *not* be wrong? Can it be permitted, under the 14th Amendment to ASSUME that this man intended to apply the Maine intestate statute "AS THOUGH" he died on June 9th, 1961 (which he did not do, and obviously did not intend to do)? If so then any tyranny under law is possible.

Only the Supreme Court of the United States has the authority, under the 14th Amendment to see through this legal maze of parlance and procedure to allow the light of legal truth to prevail as the national vogue and our way of life demands.

The inherent principal; and my plea for social justice is not only equitably right, it should be the desired constitutional duty of the Supreme Court of the United States to want State courts to play the game according to their own laws. For herein lies the germ of hypocrasy and sophistication, which destroys the strongest individuals faith and moral fiber; the essence of democracy must be preserved.

Believing that opportunity comes only to those who know what to do with it, I respectfully request your court to review the decision (Docket #50 Stetson vs. Johnson) in conjunction with (179A—2nd 307 Murray vs. Sullivan) and allow me to

reopen this matter before your court, with competent counsel, on the basis of FACT and equal justice under law.

Respectfully submitted,

EDYTHE L. DYER,

c/o 61 State Street

Bangor, Maine

March 23, 1963

(Emphasis added)